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ABSTRACT

This report describes the development and approval of the European Charter for Regional or Minority Languages. After discussing the expression of consent to the European Charter, the report focuses on the ratification process of and obligations assumed by Spain. Although Spain was one of the first signatories in 1992, the ratification was not signed until 2001. The initial Spanish Declaration strongly supported the protection of regional or minority languages, and Spain's ratification is also very supportive, though there are some exceptions related to university education and the media. The report notes that in general, the Charter's obligation to erase every distinction, exclusion, restriction, or unjustified preference that would imply a danger for the maintenance or development of a language opens up possibilities for a more positive interpretation for regional or minority languages. The Charter offers no capacity for enlarging Spain's linguistic law. The report suggests that its most significant contribution is that it offers an international guarantee of minimum protection for languages involved. (SM)

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Santiago Castellà Surribas

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Santiago Castellà Surribas

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With the support of

[The Ratification of Spain of the European Charter for Regional or Minority Languages[1]

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1. Introduction to the European Charter for Regional or Minority Languages 1
2. The expression of consent to the European Charter for Regional or Minority Languages 4
3. The ratification process of Spain 8
4. The obligations assumed by Spain 19
5. Conclusions: The possibilities for application of the European Charter in Spain 24

1. Introduction to the European Charter for Regional or Minority Languages

On October 4, 1988, the Parliamentary Assembly of the Council of Europe approved the text of the project of the European Charter for Regional or Minority Languages prepared by the Conference of European Local and Regional Powers, so that the text could be raised to the level of a Convention of the

[1]In order to aid the comprehension of the readers of the English version who are not familiar with the Spanish political scene, we have included a whole series of descriptive notes: note 20 concerning the Partido Popular, note 21, the Cortes Generales (House of Commons), note 24, Nova Esquerra-Iniciativa per Catalunya-Verds, note 25, the Grup Català (Convergència i Unió), note 27, the Grupo Popular, note 28, the Grupo Socialista, note 29, the Grupo Izquierda Unida, note 30, the Grupo Vasco (Partido Nacionalista Vasco), note 31, the Coalición Canaria, note 35, the Partido Aragonés Regionalista, note 36, Unió Valenciana, note 39, the Xunta Aragonesista, and note 40, the Bloque Nacionalista Gallego.

Council of Europe.[2] On June 22, 1992, and after many remarks by the Assembly[3], the Ministerial Committee decided to adopt this text as an agreement after the intense work done by the *ad hoc* Committee of Experts on Regional or Minority Languages (CALH) which was in charge of its definitive preparation.

Once many reserves had been overcome, and with the abstention of Turkey, Greece, France, the United Kingdom and Cyprus, the European Charter for Regional or Minority Languages was adopted[4]. It is based on intercultural and plurilingual principles and inspired more by cultural than political conceptions[5]. It was ready for signing on November 5, 1992, and came into force on March 1, 1998, when the first five required ratifications were obtained.

One of the main difficulties the European Charter had to face is the diversity of situations to be regulated and the heterogeneity of them, which has led to the laxity of its proposals, to such an extent that one author has spoken of an "*à la carte* system"[6], given the large margin of leeway that states have in its application.[7]

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[2] In this sense, WOEHRLING, J.- M.: "Institutions Européennes et droit linguistiques des minorités", in GIORDAN, H. (DIR): *Les minorités en Europe -Droits linguistiques, droits de l'homme*, Ed. Kime, Paris, 1992, pp. 517 to 521; and PETSCHEN, S.: "Entre la política y el derecho: la Carta europea de las lenguas regionales o minoritarias", *Revista de Estudios Políticos*, nr. 66, 1989, pp. 127 to 144. On the process of elaboration of the European Charter, a member of the team of experts responsible for its writing wrote two interesting articles, DE PUIG, LLUIS M.: "Informe provisional sobre la preparació d'un projecte de Carta europea de les llengües regionals i minoritàries", *R.L.D.*, nr. 8, pp. 79 to 92; and, by the same author, "Debat i elaboració de la Carta europea de les Llengües", *R.L.D.*, nr. 16, pp. 153 to 172.

[3] For instance, PARLIAMENTARY ASSEMBLY, Recommendation 1177 (1992) and Directive 474 (1992), both from February 5, 1992; Ops. Cits. In these texts, among other things, it was proposed to the Ministerial Committee: "*...de conclure dans les meilleurs délais les travaux en cours pour l'élaboration d'une Charte des langues régionales et minoritaires, et de faire tout son possible pour une mise en œuvre de la Charte*" ("*...to conclude, as soon as possible, the work in progress for the elaboration of a Charter for regional or minority languages, and to do everything possible for this charter to be applied.*"

[4] EUROPEAN CHARTER FOR REGIONAL OR MINORITY LANGUAGES, S.T.E., nr. 148.

[5] In this sense, CHRISTOPOULOS, D.: "La question de la protection des minorités dans un ordre public européen: analyse critique des travaux élaborés au sein du Conseil de l'Europe, de la CSCE, et de la CEE", Université R. Schuman, Thèses (Theses), Strasbourg, 199, pp. 100 to 108.

[6] CHRISTOPOULOS, D.: *La question de la protection...*, Op. Cit., p. 101. See also the analysis on the different degrees of commitment that may be assumed by a state as regards the Charter which is made in KOVACS, PETER: "La protection des langues des minorités ou la nouvelle approche de la protection des minorités ? "Quelques considérations sur la Chartere européenne des langues régionales ou minoritaires", *R.G.D.I.P.*, vol. 97, 1993/2, pp. 414 and 415.

[7] HARTING, HANNO: "Les travaux du Conseil de l'Europe dans la domaine des minorités", in GRIGORIOU, PANAIOTIS (ED.): *Questions de minorités en Europe*, Centre Hellénique d'Etudes Européennes, Presses interuniversitaires

The approach from more cultural than political points of view of the Charter, devoted more to the protection of languages than to the protection of minorities[8], makes it so that rights are not created directly for the users of languages; instead, obligations for the states to legislate and adjust their regulatory and administrative activity to the principles determined by the Charter are set up.[9]

The Charter excludes from its scope emigrants' dialects and languages, focusing on the preservation of those languages which, as its Article 1 states, are *"traditionally spoken in the territory of a state by the subjects of this state who constitute a numerically inferior group compared to the other subjects of the state, and different from the official languages(s) of this state."* It distinguishes between languages which have a territorial basis and those which are not territorial.[10] Furthermore, it offers several measures in different spheres in which the use of the language has special public relevance: education, legal administration, public services, the media, cultural activities, economic and social life, etc.[11]

The structure of the Charter is organised in 23 articles distributed in five sections: the definition of what is understood by regional or minority languages; the aims and principles that states have to pursue in this sphere; the measures to favour the use of these languages in the whole sphere of public life; a control mechanism based on the creation of an independent Committee of Experts to analyse state reports; and the final dispositions.

We are especially interested in highlighting the setting-up of a control mechanism which implies the creation of an independent Committee of Experts

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européennes, Brussels, 1994, p. 289.

[8] As VERHOEVEN indicates, "L'objectif est seulement d'inviter les Etats à reconnaître les langues régionales ou minoritaires, en facilitant l'emploi aux fins de les sauvegarder" ("The aim is only to invite the states to recognise regional or minority languages, favouring their use in order to safeguard them"), in VERHOEVEN, JOE: "Les principales étapes de la protection internationale des minorités", *R.T.D.H.*, nr. 30, 1997, pp. 200 and 201.

[9] HARTING, H.: "Les travaux du Conseil ...", Op. Cit., p. 289.

[10] On the concepts employed in the European Charter, see THORNBERRI, PATRICK & MARTIN ESTEBANEZ, MARÍA AMOR: *The Council of Europe and Minorities*, COEMIN, 1994, pp. 32 and 33.

[11] An analysis of its contents may be found in ALBANESE, FERDINANDO: *"Ethnic and linguistic minorities in Europe"*, *I.E.L.*, Vol.11, 1991, pp. 332 to 336.

which will analyse the periodical reports of the states, as well as the communications and informations of associations and bodies related with protected regional or minority languages. The result of the activity of this Committee will be a report on the situation which has been the subject of study and, if necessary, the formulation of non-binding recommendations, indicating the most suitable measures to reorientate situations which are opposed to the aims of the European Charter. Nevertheless, the substantial margin of optional decision allowed when assuming these obligations makes it so that part of the doctrine doubts about the efficiency of this device.[12]

2. The expression of consent to the European Charter for Regional or Minority Languages

The expression of consent of a state to bind itself through the European Charter for Regional or Minority Languages presents particular characteristics that differentiate it from other international treaties. Its main characteristic is flexibility when assuming the obligations derived from the Charter. In fact, according to Article 2 of the European Charter, state obligations can be divided into two large groups: firstly, the obligations derived from Part II of the Charter -Article 7, where the aims and principles pursued are contained-; secondly, the obligations derived from Part III of the Charter -Articles 8 to 14- specified in matters regarding education (Article 8), legal administration (Article 9), relations with the administrative authorities and public services (Article 10), the media (Article 11), cultural activities and services (Article 12), the participation in economic and social life (Article 13) and cross-border relations (Article 14).

The great difference between the obligations assumed by a state according to Part II of the Charter, and those of Part III, is the obligation of the former and the optional or flexible nature of the latter; but this statement can be made more precise. As a matter of fact, regarding the aims and principles of the Charter expressed in Article 7, Part II, in principle they are compulsory for the state, and the

[12] THORNBERRI, P. & MARTIN, M. A.: *The Council of ...*, Op. Cit., p. 35.

possibility of choosing between them or prioritising ones and not the others is not stated. However, this compulsory nature which cannot be given up can be made more precise by the state having the right to make reservations that exclude or modify the contents of these dispositions; this is a generically guaranteed possibility by General International Law[13], and specifically by the Charter itself which in its Article 21 expresses the possibility of carrying out amendments to Paragraphs 2 to 5 of Article 7, any reservation on other dispositions being expressly forbidden. Thus, Article 7 can be reserved in its entirety by a state except for its Paragraph 1 which establishes the aims and principles which have to rule legislative and administrative action and the state's practice in the areas where regional and minority languages are spoken. These aims and principles are the following: the recognition of such languages as an expression of cultural enrichment (Article 7.1.a), to avoid that administrative divisions are a hindrance for the fostering of these languages (Article 7.1.b), the fostering of them in order to safeguard them (Article 7.1.c), to favour the use of the languages in public and private life (Article 7.1.d), the support and development of relations between groups which use one specific language and between the different linguistic groups (Article 7.1.d), the provision of means for teaching and studying regional or minority languages (Article 7.1.e and h), to favour their voluntary learning (Article 7.1.g) and the promotion of cross-border exchanges (Article 7.1.i). These *aims and principles* are compulsory for the state which expresses its consent to bind itself to the Charter and cannot be the object of any reservation. However, as *aims and principles*, they generate behavioural obligations and not specific obligations of results, which makes it much more difficult to control and blurs their obligatory nature.

But what is most surprising in this Part II of the Charter is the possibility for the state to reserve Paragraphs 2 to 5 of Article 7. In these paragraphs, the *aims and principles* are not restricted to the areas where regional or minority languages are spoken; instead, their sphere is the whole of the state territory. And they are made more specific in the establishment of the principle of non-discrimination as regards the use of regional or minority languages, in the possibility of establishing

[13] Vienna Convention on the Law of Treaties of May 23, 1969 (*BOE* nr. 142, of June 13, 1980, articles 19 to 23).

special measures of positive action or reverse discrimination (Article 7.2), in the fostering of understanding and tolerance between the different linguistic groups (Article 7.3), in the participation of the people concerned in the planning of linguistic policies (Article 7.4) and, finally, in the application of the principles contained in Article 7.1 to the languages without any defined territorial basis (Article 7.5). And I say that it surprises me because, since it is a matter of aims and principles, the possibility of making reservations is quite unusual. In fact, the 1969 Vienna Convention on the Law of Treaties excludes in its Article 19 the possibility of reservations which are *"incompatible with the object and purpose of the treaty"*.[14] But what is most surprising is the possibility of reserving Article 7.2 which establishes the non-discrimination principle because of the language,[15] insofar as this is not a mere conventional disposition but the translation of a fundamental principle of contemporary International Law in the form of a regulation of *ius cogens*, any contrary agreement being null and void of full right.[16]

As regards Part III of the Charter, Articles 8 to 14, the initial flexibility is here partially limited. It is true that Article 2 indicates that the states will choose the languages which are the subject of protection and the obligations contained in Part III of the Charter which they assume as regards each one of these languages. But with the limitation of applying "a minimum of thirty-five paragraphs or sub-paragraphs (...) including at least three chosen from each of the Articles 8 and 12 and one from each of the Articles 9, 10, 11 and 13". This norm partially restricts the state's optional margin when choosing the obligations which it assumes regarding a

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[14] A matter that was confirmed by the International Court of Justice in the Consultative Opinion of May 18, 1951, on the validity of certain reserves to the Convention for the Prevention and Sanction of the Crime of Genocide.

[15] European Charter for Regional or Minority Languages, Article 7.2: *"The parties undertake to eliminate, if they have not done so yet, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages "*.

[16] As regards the principle of non-discrimination as a rule of general International Law and as a rule of *ius cogens*, see THORNBERRY, PATRICK: *International Law and the rights of minorities*, Clarendon paperbacks, Oxford, 1992, pp. 310 to 328; and MCKEAN, W.: *Equality and discrimination under International Law*, Clarendon Press, Oxford, 1983, pp. 277 and ss.

specific language; however, the fundamental limitation to this state's optional decision is to be found in the aim and purpose of the disposition itself, planned to adapt state obligations to the needs of each specific language, and not to allow states to escape from assuming international obligations as regards regional or minority languages. There has been an attempt to define a minimum European standard of linguistic rights, by means of a demand made by the Commission of Juridical Affairs and Human Rights of the Parliamentary Assembly of the European Commission for Democracy through Law, known as the Venice Commission. Nevertheless, in its report, the latter avoids stating its opinion clearly, indicating that to define a *"hard core"* of linguistic rights becomes *"alien to the spirit and working system of the European Charter"*.[17]

Given this flexibility, each contracting party state will have to make public the languages which will be the subject of protection and the obligations of Part III of the Charter which it assumes as regards these languages. As a whole, it determines a model of expression of consent which is specific to this device. Thus, the states, when expressing their consent, will have to attach a document in which they make their choice explicit. The juridical nature of this document is not clear: we could say that we are faced with a partial ratification or an amendment which excludes the application of obligations not expressly indicated and for all those languages which are not expressly specified. But it seems that there is a general consensus in talking about a "state declaration" although, given its effects, it would be more correct to speak about an expression of partial consent or subjected to condition, or about reservations, despite the fact that, as Article 3.3 of the European Charter specifies, "The undertakings referred to in the foregoing paragraph shall be deemed to form an integral part of the ratification, acceptance or approval and will have the same effect as from their date of notification."

This declaration can be displayed at the moment of the signing of the Charter, a juridical act which does not imply binding oneself by it; in fact, in the

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[17] Avis de la Commission de Venise sur les dispositions de la Charte européenne des langues régionales ou minoritaires que devraient être acceptées par tous les Etats contractants, de 2 de març de 1996. (Notice of the Venice Commission on the dispositions of the European Charter for Regional or Minority Languages which should be adopted by all contracting states, of March 2, 1996.)

terminology of the Treaty Law it is equal to authentication, that is to say, expressing that the treaty's text is considered authentic and definitive;[18] and/or at the moment of expressing the consent to bind oneself, be it by means of ratification, acceptation or approval, equivalent terms according to Article 2.1.b) of the 1969 Vienna Convention on the Law of Treaties, which indicates a different degree of solemnity in the expression of state consent. The declarations made at the moment of signing do not have any juridical value and can be further confirmed or modified at the moment of expressing consent, although they can be used to know the initial political position of the state before its consent becomes definitive.

Another important characteristic of this model of expression of consent is that the possibility of further enlarging the initial declaration by extending the obligations assumed by the state or the languages subject to protection, as provided in Article 3.2[19], is permanently open. Inversely -as we see it-, the possibility of restrictively modifying the assumed obligations is not foreseen; going backwards is thus excluded, while the international protection initially assumed consolidates itself. The sole state option to free itself from these international obligations is by means of renouncing the entirety of the Charter's text, which is foreseen and regulated in its Article 22. This impossibility of reducing the protection initially established places us in a dynamic of progressiveness which has to be favourably valued.

3. The ratification process of Spain

Spain is one of the first signatories of the European Charter for Regional or Minority Languages, as an active participant in its process of conclusion within the Council of Europe, signing on the very same day of its proclamation and having its opening to ratification on November 5, 1992. But it was not until February 2,

[18] Vid. Article 10 of the 1969 Vienna Agreement on the Law of Treaties, Op. Cit.

[19] European Charter for Regional or Minority Languages, Article 3.2: *"Any Party, at any posterior moment, will be able to notify to the General Secretary that it accepts the obligations derived from the dispositions of any other paragraph of the Charter which had not been previously specified in its ratification device, acceptation or approval, or that it will apply Paragraph 1 of this Article to other regional or minority languages, or to other official languages less widespread in the whole or in one area of its territory".*

2001, that the ratification device was signed by King Juan Carlos I with the endorsement of the Minister of Foreign Affairs, Mr. Josep Piqué Camps, being deposited before the General Secretary of the Council of Europe on April 9, 2001, and coming into force at an international level for Spain on August 1, 2001. This act was published by the *Boletín Oficial del Estado* (State's official gazette), nr. 222, thus acquiring full internal efficacy on September 15, 2001. Nevertheless, until that moment, plenty of setbacks had occurred.

The European Charter, elaborated with the participation of several representatives of Spain, at the Conference of Local and Regional Powers of Europe and at the Parliamentary Assembly, both of the Council of Europe, was signed by Spain in the same ceremony in which the Ministerial Committee of the Council of Europe opened it to signing on November 5, 1992. At that very moment, a first declaration on regional and minority languages that within Spain would be the subject of protection, as well as on the assumed obligations of Part III of the Charter was formulated.

It was not until the end of the VI Term -within the political context of the first government of the Partido Popular (Popular Party)[20] which did not have enough of a parliamentary majority and which was supported by nationalist forces, particularly Catalan and Basque- that the ratification procedure started, whose central element is the authorisation of the Cortes Generales (Spanish Parliament)[21] to the government. This important parliamentary procedure concentrated intense debate, from which a text of consensus finally resulted. But the ratification process was interrupted by the end of the term; therefore, it was repeated during the VII Term.

In 1992, in its declaration attached to the signing of the Charter, Spain defined as regional or minority languages with respect to the application

[20] At present, the Popular Party vertebrates the right and center-right in the whole of Spain. It is a member of the European Popular Party and of the International Christian Democrats.

[21] The Spanish Constitution organises the legislative power in both Houses of Representatives, the Congreso de los Diputados (House of Commons) and the Senate, which together are called Cortes Generales (Parliamentary Assembly).

of the dispositions of the European Charter *"the languages recognised as official in the Statutes of Autonomy of the Autonomous Communities of the Basque Country, Catalonia, the Balearic Islands, Galicia, the Community of Valencia and the Comunidad Foral de Navarra. (...) At the same time, Spain declares, to the same ends, that within regional or minority languages are also comprised those that the Statutes of Autonomy of Aragon, Asturias and Catalonia protect and help in the areas where they are traditionally spoken (...)"*. The process of parliamentary debate was centred around these initial ideas.

The Spanish government decided to start a ratification procedure; to do that it requested the authorisation of the Cortes Generales, as required by Article 94.1 of the Constitution, among other things, for political treaties and for the treaties regarding fundamental rights.[22] The Cortes' authorisation requires the approval of the majority in both legislative houses. The declaration attached to the ratification which the government proposed to Parliament was different to that one Spain had presented at the moment of signing before the General Secretary of the Council of Europe. The first paragraph of the government initiative says that *"Spain declares that, to the ends foreseen in the aforementioned articles (Article 2, Paragraph 2 and Article 3, Paragraph 1 of the European Charter), by regional or minority languages is meant, as languages recognised as official in the Statutes of Autonomy of the respective Autonomous Communities, Euskera in the Basque Country, Catalan in Catalonia and in the Balearic Islands, Galician in Galicia, Valencian in the Valencian Community and Basque in the Comunidad Foral de Navarra."*[23] The proposal of Aznar's government is different from the 1992 Declaration in that the languages are now specified without almost any scientific criterion, distinguishing between Catalan and Valencian, and the inexplicable differentiation between Euskera and Basque. In

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[22] Spanish Constitution, Article 94.1: "The giving of consent of the state to oblige itself by means of treaties or agreements will require the previous authorisation of the Cortes Generales in the following cases: A) Treaties of a political nature. B) Treaties or agreements of a military nature. C) Treaties or agreements which have an effect on the territorial integrity of the state or on the fundamental rights and duties established in Title I. D) Treaties or agreements which imply financial obligations for public finance. E) Treaties or agreements which imply a modification or a derogation of some law or which require legislative measures for their execution."

[23] *Boletín Oficial de las Cortes Generales (BOCG)*, Sección Cortes Generales, VI Legislatura (VI Term), Serie A, nr. 383 of October 11, 1999. Also in *BOCG*, Congreso de los Diputados (House of Commons), Iniciativa (Initiative), C-359-1 of October 11, 1999.

addition to that, in the government's proposal there is no mention whatsoever of the languages that, although not declared as being official, enjoy protection to some degree in the Statutes of Autonomy of Aragon, Asturias and Catalonia, such as Bable, Aragonese Fabla and Aranès.

Parliamentary groups responded to this governmental initiative with the presentation of six amendments: the first two signed by Manuel Alcaraz Ramos of Nueva Izquierda-Iniciativa per Catalunya-Verds[24], integrated into the Grupo Mixto ("Mixed Group"), and the four other signed by Josep López de Lerma i López of the Grup Parlamentari Català (Catalan Parliamentary Group, Convergència i Unió)[25]. The first amendment by Manuel Alcaraz proposes that out of consideration for the unity of the Catalan language, the writing of the text should be the following: *"...Catalan, in any of its linguistic and geographical varieties, in Catalonia, the Balearic Islands and the Valencian Community,..."*. And his second amendment aims at adding *"Asturian Bable in the territorial sphere of the Principality of Asturias"* as a regional or minority language which still does not receive the treatment of an official language.[26]

Meanwhile, the Grup Parlamentari Català (Convergència i Unió) proposes in Amendment nr. 3 a text based on the legal denomination of each Statute of Autonomy; that is to say, the same as the one proposed by the Spanish government, but indicating that *"by regional or minority languages is meant, as languages recognised as official in the Statutes of Autonomy of the respective Autonomous Communities with the legal denominations employed in them..."*, justifying this proposal with the idea of *"not questioning the pronouncement of most philology studies and of the Academies."* In its Amendment nr. 4, CiU proposes to add as

[24] A parliamentary group made up of Nueva Izquierda, MP's on the left of the Socialist Party but who are critical as regards the strategy of Izquierda Unida (which is made up of the Partido Comunista de España and small leftist parties), and by Iniciativa per Catalunya-Verds, which forms the eco-socialist leftist space in Catalonia.

[25] The Grup Parlamentari Català is formed by MP's chosen from the lists of Convergència i Unió, a coalition of two Catalan nationalist parties: Convergència Democràtica de Catalunya, integrated into the European Liberal, Democratic and Reformist Group (ELDR), and Unió Democràtica de Catalunya, integrated into the European Popular Party.

[26] *BOCG*, Congreso de los Diputados (House of Commons), Enmiendas (Amendments), C-359-2, of November 10, 1999.

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languages which are the object of protection the ones that although not being official are expressed in the Statutes of Autonomy of Catalonia, Aragon and Asturias, but in the case of Aragon, not restricting itself to Aragonese Fabla but proposing a text in which it makes clear the protection for *"the Catalan of the Eastern regions* (comarcas) *of Aragon, from Ribagorça to Matarranya, and Aragonese in the regions of Northern Aragon."* In Amendments nr. 5 and 6, Convergència i Unió proposes the obligations which have to be assumed by Spain as regards Part III of the Charter for the official languages in the Statutes of Autonomy and for those protected but not official, respectively, a matter we will deal with in the next section.

The group of reporters of the Foreign Affairs Commission of the Congreso de los Diputados (House of Commons) was constituted by the following MP's: for the Grupo Popular (Popular Party Parliamentary Group)[27], Francisco Ricomá de Castellarnau and Pilar Pulgar Fraile; for the Grupo Socialista (Socialist Party Parliamentary Group),[28] Jordi Marsal i Muntalà and Lluís Maria de Puig i Olivé; for the Izquierda Unida Group[29], José Navas Amores; for the Catalan Group-CiU, Carme Laura Gil i Miró; for the Basque Group-PNV[30], Juan González de Txábarri Miranda; for the Coalición Canaria Group[31], Luís Mardones Sevilla; and for the Grupo Mixto, Manuel Alcaraz Ramos. It reported favourably, giving way to the discussion of the text and of the amendments within the Commission.[32]

On December 15, 1999, the Foreign Affairs Commission met and there arose the doubt as to whether, facing the imminent dissolution of the Cortes

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[27] MP's chosen from the lists of the Popular Party (Vid. Supra note 19).

[28] The Grupo Socialista is formed by MP's chosen from the lists of the Partido Socialista Obrero Español (PSOE) and of the parties federated to it such as, among others, the Partit Socialista de Catalunya (PSC) and the Partido Socialista de Euskadi (PSE).

[29] The Izquierda Unida Group is formed by MP's chosen from the lists of IU (Vid. Supra note 23).

[30] The Grupo Vasco is formed by MP's chosen from the lists of the Partido Nacionalista Vasco (PNV), a nationalist Christian Democrat group from the Basque Country.

[31] Coalición Canaria is made up of several nationalist and regionalist parties of the centre and center-right from the Canary Islands.

[32] *BOCG*, Congreso de los Diputados, Informe de la Ponéncia (Report of the Committee), C-359-3, Novembre 22, 1999.

of the VI Term, it was worthwhile discussing the matter of the European Charter for Regional or Minority Languages, given the fact that, since the voting of the Senate could not be held, all actions undertaken would remain without effect.[33] Faced with the doubts exposed by the MP for the Socialist Party Parliamentary Group, Estrella Pedrola and by the one for the Popular Party Parliamentary Group, Robles Fraga, the Chairman of the Commission, Francisco Javier Rupérez Rubio insisted on the fact that the Houses were not yet dissolved *"and I don't have to presume that they have to be dissolved or when they will have to be dissolved (...). Therefore, we will continue with the procedure as it is normally done."*

The parliamentary debate was long and confused, with many transactional amendments presented *in voce*[34]. The participation of Manuel Alcaraz was marked by the defence of Asturian Bable, refusing the "Asturian" denomination proposed by CiU, the criticism of the artificial difference between Euskera in the Basque Country and "Vascuence" in Navarra, the refusal for "scientific rationality" reasons to make the distinction between Catalan and Valencian, and, finally, the proposal of a transactional amendment, which consisted in not naming the languages which are an object of protection, but to simply speak about languages recognised as official in the Statutes of Autonomy of the respective Autonomous Communities; a text he believed would avoid the problem of eventual statutory reforms where some specific languages are declared official, as could happen with Catalan in Aragon.

Immediately after, the MP Ignasi Guardans spoke to advocate for the four amendments presented by the Grup Parlamentari Català (Convergència i Unió), which fixed its initial position on the idea that the ratification of the European Charter is not a valid means to try to perfect the protection of Catalan; he stated that it would be absurd, ridiculous and juridically inconsistent to try to improve the situation of languages by means of modifying or amending a declaration of ratification in an

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[33] Regulations of the Congreso de los Diputados (House of Commons), Article 207: *"Once the Congreso de los Diputados has been dissolved or its mandate has expired, all the affairs pending examination and resolution by the Chamber will lapse, except for those which constitutionally must be known by its Diputación Permanente (Standing Committee)."*

[34] *BOCG, Diario de Sesiones del Congreso de los Diputados*, nr. 819, Comisiones (Commissions), Asuntos Exteriores (Foreign Affairs), Session 62, held on December, 1999, pp. 24385 to 24396.

international treaty, and asserted that *"the only thing our amendments try to achieve is that the declaration that the Spanish Kingdom presented to the European Charter be in perfect harmony with the Constitution and with the Statutes of Autonomy"*. After refusing to begin linguistic polemics *("we believe that this is a subject which has to be solved in an academic forum and not in a political one")*, he accepted the *in voce* transactional amendment presented by Manuel Alcaraz, to speak of languages recognised as official in the Statutes of Autonomy, without even defining which these are. He advocated for the establishing of obligations also for languages which are not official but which are protected by the Statutes of Autonomy of Catalonia, Aragon and the Principality of Asturias, such as Aranès, Fabla and Asturian Bable, respectively.

Once all the amendments were advocated for, Serrano Vinué spoke on behalf of the Partido Aragonés Regionalista[35] referring to Article 7 of the Statute of Autonomy of Aragon which declares that a law of languages will organise an Aragonese linguistic space where, it asserts, cohabit four linguistic varieties: Aragonese Fabla, Castilian (Spanish), Xapurriau Catalan and the Catalan spoken in Aragonese; finally, this MP presented an *in voce* amendment proposing that Amendment 6, expressed by Convergència i Unió, does not speak of regions or territories when it refers to Aragon -something the law of languages of Aragon will already do- and that only reference be made to the non-official languages protected by the Statutes of Autonomy.

After him, the MP for Unió Valenciana[36], Chiquillo Barber started to speak but, not being acquainted at all with the text that was going to be voted on (he thought that they were discussing a text of the European Union), he advocated for the denomination of Valencian for the Catalan spoken in Valencia, in order to be coherent with the naming employed in Article 7 of the Statute of Autonomy of the Valencian Community. And he was against the fact of not indicating by its name each protected language: *"I believe that, logically and coherently, in the document that*

[35] The Partido Aragonés Regionalista is a conservative and regionalist force in the Aragonese Autonomous Community. Sometimes, it has run for elections in coalition with the Popular Party.

[36] Unió Valenciana is a conservative regionalist party in the Valencian Autonomous Community, known for its defence of Valencian as a language different from Catalan.

Spain has to present to the European Union (...), Valencian must be clearly stated as a language which is specific to the Valencian people".

The participation of the MP for the Socialist Party Parliamentary Group, Lluís Maria de Puig i Olivé, and that of the MP for the Popular Party, Martínez Casañ, changed the dynamics of the debate. De Puig presented a transactional amendment to Amendment nr. 6 of CiU, in which the denomination of protected but non-official languages was removed. In the same sense, Martínez Casañ presented an *in voce* amendment. The fuss was considerable because the same question regarding the fact of defining or not defining the languages protected by the Statutes of Autonomy but which are not official had been approached in a similar way by all the people who had spoken. Finally, the representative of the Grup Parlamentari Català-CiU accepted the socialist amendment, proposing voting on the following text: *"by regional or minority languages it is also meant those protected and supported by the Statutes of Autonomy of Catalonia, Aragon and Asturias in the territories where they are traditionally spoken"* and to establish for them the protection that is reasonable in the application of the principles of the European Charter. But at the last moment, the Popular Party Parliamentary Group also tried to remove from the text the mention of the three Autonomous Communities and to simply state *"by regional or minority languages it is meant those that the Statutes of Autonomy thus recognise, protect or support"*. Ignasi Guardans opposed this provoking the incredulity of the Commission's Chairman: *"Why don't you accept it? Where is the difference? Where is the theology?"*. Such questions were powerfully answered: *"The theology is simply found in the fact that the Grupo Popular, with the idea of 'coffee for everybody'* ('café para todos') *even intends to create minority languages in Andalucia, Galicia and Extremadura"*. This contribution was followed by a multiplicity of proposals to make positions come closer and to reach a consensus on this matter, after a pause and the change in the order of the day to delay this voting.

As regards the languages declared official in the Statutes of Autonomy, Ignasi Guardans removed Amendment nr. 3 by CiU, accepting the consensus around the idea that the denomination of the languages is not to be stated, but only that *"Spain declares that, (...), by regional or minority languages it is meant the*

languages recognised as official in the Statutes of Autonomy of the respective Autonomous Communities", although further contributions by the MP for Unió Valenciana, Chiquillo Barber, reopened this subject.

At the last moment, the consensus of all the groups was attained, the Declaration being finally written as follows:

> *"Spain declares that, to the ends foreseen in the articles mentioned, by regional or minority languages it is meant the languages recognised as official in the Statutes of Autonomy of the Autonomous Communities of the Basque Country, Catalonia, the Balearic Islands, Galicia, Valencia and Navarra.*
>
> *All the same, Spain declares, to the same ends, that by regional or minority languages it is meant those protected and supported by the Statutes of Autonomy in the territories where they are traditionally spoken."* [37]

The first paragraph was approved unanimously, and the second one, which was separately voted at the request of the MP for the Partido Aragonés Regionalista, Serrano Vinué, was passed by 30 votes in favour and 2 abstentions.

But in fact, the arrival of the end of the term and the dissolution of the houses made it so that all the work done had to be repeated, for it had not been finished. During the VII Term, the subject was not taken up again until the Spanish government's initiative arrived again at the Congreso de los Diputados (House of Commons) on July 21, 2000. In the government's initiative, the text of Paragraph 1 met the consensus attained in the VI Term; but the consensus attained regarding non-official languages -Paragraph 2- was broken, and the statutes taken into account were not mentioned[38]. This is basically why amendments were again presented: two by

[37] *BOCG*, Congreso de los Diputados (House of Commons), Dictamen de la Comisión (Commission's Report), C-359-4, December 29, 1999.

[38] *BOCG*, Congreso de los Diputados, Iniciativa (Initiative), C-43-1, July 21, 2000.

José Antonio Labordeta Subías, MP for the Xunta Aragonesista[39] to the Grupo Mixto, one by Francisco Rodríguez Sánchez, MP for the Bloque Nacionalista Galego[40] to the Grupo Mixto, and two presented by Xavier Trias i Vidal de Llobatera as the representative of the Grup Parlamentari Català (Convergència i Unió).[41]

The amendments of the MP for the Xunta Aragonesista were directed, on the one hand, towards including in Paragraph 1 of the Declaration, in addition to the languages recognised in the Statutes of Autonomy, the languages recognised *"in the legislation that develops them"*, thus leaving the way open for the Autonomous Community of Aragon and the Principality of Asturias; and, on the other, to propose that *"taking into consideration the situation of each one of them, special attention will be paid to those (languages) whose situation is more critical, with priority being given to safeguarding them as it is provided for in Article 7 of the Charter"*.

The amendment of the Bloque Nacionalista Galego aimed at obtaining that the entirety of the dispositions of Part III of the European Charter apply to the official languages in the Statutes of Autonomy, a matter we will deal with in the following section of this work. This amendment was removed because, as we will see, the Spanish Declaration already assumed the entirety of the obligations, choosing the alternatives that imply more protection to languages.

From the amendments by Convergència i Unió, the first one is purely technical, dealing with the grammatical improvement of the text, and proposes to suppress the word "respective" when it refers to the Autonomous Communities which recognise the languages as being official in their Statutes of Autonomy. The second amendment, also of a technical nature, proposes to add the expression *"without declaring them official"* when it refers to other languages protected or supported by the Statutes of Autonomy.

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[39] The Xunta Aragonesista is a leftist regionalist political party in Aragon.

[40] The Bloque Nacionalista Galego (BNG) is a Galician nationalist and leftist force.

[41] *BOCG*, Congreso de los Diputados (House of Commons), Enmiendas (Amendments), C-43-2, September 22, 2000.

In the debate within the Foreign Commission, on October 19, 2000,[42] Mr. Aymerich Cano spoke on behalf of the Grupo Mixto which announced the removal of the two amendments presented by the Xunta Aragonesista in favour of a transactional one which had been agreed upon with Convergència i Unió. Grau Buldú started to speak on behalf of CiU to remove the first amendment in order to respect the original text of the Constitution and presented the transactional amendment which had been agreed upon among the groups presenting amendments which says: *"All the same, Spain declares to the same ends that by regional or minority languages it is also meant the ones protected and supported by the Statutes of Autonomy of Aragon, Asturias and Catalonia in the territories where they are traditionally spoken"*. The representative of the Socialist Party Parliamentary Group, Lluís Maria de Puig, the one of the Popular Party Parliamentary Group, Camps Ortíz, and that of the Basque Parliamentary Group, Uría Etxebarria, supported this proposal of transactional amendment, which was unanimously approved.

On November 23, 2000, the plenum of the Congreso de los Diputados (House of Commons) ratified this decision and approved the authorisation for the government to ratify the European Charter and the Spanish Declaration, with 262 votes in favour and 2 abstentions.[43] On December 20, 2000, the Senate also passed the authorisation.[44] Finally, what we have now is a final text with a clear contradiction: on the one hand, a high degree of protection for the languages recognised as official in the aforementioned Statutes of Autonomy -the Basque Country, Catalonia, the Balearic Islands, Galicia, Valencia and Navarra-; and, on the other, the degree of protection which *"could be reasonably applied"* to these languages protected and supported in some Statutes of Autonomy -which is now open because not a single language is mentioned- is here limited.

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[42] *BOCG, Diario de Sesiones del Congreso de los Diputados*, nr. 86, Comisiones (Commissions), Asuntos Exteriores (Foreign Affairs), held on October 19, 2000, pp. 2333 to 2337.

[43] *BOCG, Diario de Sesiones del Congreso de los Diputados*, nr. 43, Pleno (plenary session), held on November 23, 2000, p. 2109.

[44] *BOCG, Diario de Sesiones del Senado*, nr. 30, Pleno (plenary session), held on December 20, 2000.

4. The obligations assumed by Spain

The initial Spanish Declaration made at the moment of signing the European Charter already gave strong support to assuming obligations in what was called "on the higher side" *("por la banda alta")*; that is to say, with a high degree of protection for regional or minority languages. This matter has not been the subject of amendments or of debate during the parliamentary procedure. The Spanish Declaration, as we have seen, clearly makes a difference between the languages recognised as official in the Statutes of Autonomy and the languages that, although not being official, are protected or supported in the Statutes of Autonomy of Catalonia, Aragon and Asturias.

As regards education, regulated in Article 8 of Part III of the European Charter, Spain obliges itself in sections *a (i), b (i), c (i), d (i), e (iii), f (i), g, h, i;* that is to say, as regards pre-school education, to provide the highest degree of protection to *"foresee a pre-school education guaranteed in the regional or minority languages" (i)*, therefore refusing the alternatives which consist in merely referring to *"a substantial part of pre-school education" (ii)*, or to leave it to the wish of a sufficient number of families *(iii)*; the same happens regarding primary education *(b)*, where less demanding alternatives such as that of including the teaching of regional o minority languages in the curriculum *(iii)* are rejected, and it is chosen to *"foresee guaranteed primary education in the corresponding regional or minority languages" (i)*; *mutatis mutandi* regarding secondary education *(c)*, technical training and vocational training *(d)*, as well as adult education and on-going training *(f)*.

However, when it refers to university education, a more ambiguous and less protectionist text is chosen which says: *"if, given the role of the state regarding higher education centres, sections (i) and (ii) could not be applied, to foster and/or authorise the establishment of university education or other forms of higher education in the regional or minority languages, or of means that allow to study these languages in the university or in other centres of higher education"*; obviously based on the idea of university autonomy. Section *(i)* which consists in foreseeing

university education in regional or minority languages is rejected, thus providing a weaker protection; in this section, the Spanish Declaration clearly detaches itself from the higher degree of obligations.

Sections *(g)*, *(h)* and *(i)*, which do not offer alternatives, are accepted in their entirety and provide the teaching of the history and the culture of the regional or minority languages *(g)*, guarantee the training of professors *(h)* and also create bodies to follow-up and control the obligations assumed by reason of Article 8 in its entirety *(i)*. Also Section 2 of Article 8, which foresees the authorisation, the fostering or the establishment of the teaching of regional or minority languages outside the territories where they are spoken if the number of speakers justifies it, is integrally accepted by Spain.

As regards the administration of justice, the choice is clearly on the highest side of the protection foreseen by the European Charter; thus, Spain assumes the obligations taken into consideration in sections *a (i)*, *a (ii)*, *a (iii)*, *a (iv)*, *b (i)*, *b (ii)*, *b (iii)*, *c (i)*, *c(ii)*, *c (iii)* and *d* of Paragraph 1, Section *a* of Paragraph 2 and Paragraph 3. Thus, as regards penal proceedings, all the possibilities taken into consideration by the Charter are accepted; the latter offers them either as joint obligations or as alternative obligations, linking the four obligations with the conjunctions "and/or". Spain decides to oblige itself by the four sections that refer, respectively, to the development of penal proceedings in the regional or minority languages at the request of one of the parts, to guarantee the right of the accused to express him/herself in his/her own language, to refuse the rejection of written or oral claims and evidence because of the their having been written in a regional or minority language, and to write, at the request of the parties, the documents of the proceedings in the regional or minority language; and if it is necessary to have recourse to interpreters and translations in order to fulfil these four obligations, the costs derived from it will never be charged to the interested parties.

As regards civil proceedings *(b)* and in administrative matters *(c)*, the Spanish Declaration also rejects the choice between the three obligations, and decides to simultaneously accept them in their entirety. Thus, parties may require the

development of the proceedings in regional or minority languages; when appearing before the court, they may express themselves in the regional or minority languages without having to assume the eventual costs of translation and interpretation; and they can present the whole documentation of the proceedings in the regional or minority language. We find two big differences as regards what is established in penal proceedings; on the one hand, no reference is made to the fact that the documents of the proceedings can be required in a regional or minority language, but only the documents provided by the parties; and, on the other, the cost-free translation and interpretation in civil proceedings is limited to the moment of appearing before the court, although Section *(d)* of Article 9 of the Charter, also integrally accepted in the Spanish Declaration, refers to trying the use of translators and interpreters in those stages where the obligation of it being cost-free has not been established and will not imply additional expenses for the interested parties.

As regards Paragraph 2, the Spanish Declaration chooses option *(a)*, rejecting the alternative of option *(b)*, obliging itself to not refuse, in the state sphere, the validity of juridical documents for the sole reason of having been written in a regional or minority language. Options *(b)* and *(c)* refer to the same assumptions, but instead of being written in a general way, as option *(a)*, they limit themselves to the relations between the parties in the proceedings, for we understand that option *(a)* is the most demanding obligation of the three possible ones.

And finally, as regards the administration of justice, Paragraph 3, which is also integrally assumed by the Spanish Declaration, establishes the obligation of making accessible, in the regional or minority language, the main legislative texts and those referring to the speakers of these languages.

Concerning administrative authorities and public services, regulated in Article 10 of the European Charter, Spain assumes the obligations contained in Paragraph 1, Section *a (i)*, *b* and *c*, in Paragraph 2, sections *a*, *b*, *c*, *d*, *e*, *f* and *g*; in Paragraph 3, sections *a* and *b*; in Paragraph 4, sections *a*, *b* and *c*; and Paragraph 5. Paragraph 1 begins with a very scarcely imperative text which leaves a wide margin for state optional decision by asserting that in the state administrative

constituencies inhabited by *"a number of speakers of regional or minority languages that justifies the following measures, the Parties, as long as they feel it is reasonably possible, commit themselves to..."*. But from the five aforementioned possibilities, the Spanish Declaration chooses the highest degree of exigency in assuming the obligation of *"making sure that these administrative authorities make use of regional and minority languages" (i)*, while rejecting less imperative alternatives such as those referring to the fact that the authorities will use the regional or minority language simply in contact with the public which addresses them in these languages *(ii)*; at the same time, it also obliges itself to provide forms and administrative texts in regional or minority languages or in bilingual versions *(b)* and to allow administrative authorities to write the documents in a regional or minority language *(c)*.

Paragraph 2 is accepted in its entirety, the obligations contained in its seven sections, respectively referred to allow and/or to foster the use of regional or minority languages in the regional and local administration, being assumed; the same happens with the possibility that the citizens present requests in these languages, the publication of official texts of the regional and local communities in their language and the use by the regional and local authorities of their language in the debates of their assemblies *"without excluding, however, the use of the official language(s) of the state"*. Finally, the possibility of using toponyms in the regional or minority language together with their use in the state official languages is also assumed.

As regards Paragraph 3 of this Article 10 concerning public services, the Spanish Declaration accepts two of the three alternatives, despite the fact that the text presents them as being mutually exclusive. In fact, we understand that option *(a)* is wider and subsumes options *(b)* and *(c)*, by establishing the obligation of ensuring that regional or minority languages are used when offering public services. In order to make possible the obligations assumed according to paragraphs 1, 2 and 3, Paragraph 4 proposes three obligations which are accepted by Spain. They imply assuming the required translations and interpretations *(a)*, hiring enough staff *(b)* and accepting, as much as possible, the petitions of transfer to the region where the regional or minority language of the civil servant who knows it *(c)* is spoken. All the

same, it integrally accepted Article 5, assuming the obligation of allowing for the use and adoption of the patronymic in the regional or minority language.

As regards the media, dealt with in Article 11 of the European Charter, the Spanish Declaration assumes the obligation of guaranteeing the creation of, at least, one radio station and one television channel in the regional or minority language and aiming at public service *(a(i))*, rejecting the less demanding alternatives proposed in the European Charter; to foster and favour the creation of, at least, one radio station and one television channel, without needing to fulfil a mission of public service, in regional or minority languages *(b(i))* and *(c(i))*; to foster and favour the production and diffusion of audition material and audiovisuals in regional or minority languages *(d)*; and to foster or favour the creation or maintenance of a press body in regional or minority languages *(e(i))*. As regards the financing of the media in regional or minority languages, the dynamic of binding itself to a greater extent to the Charter is broken; instead of assuming the additional costs which the use of these languages implies, the Spanish Declaration chooses to simply enlarge the measures of financial assistance to audio-visual productions *(f(ii))*; it also accepts to give support to the training of journalists that use regional or minority languages *(g)*. Paragraphs 2 and 3 of this Article 11, integrally accepted by the Spanish Declaration, refer to freedom of expression, plurality and to the freedom of receiving the media in regional or minority languages.

As regards cultural activities and services, regulated in Article 12 of the European Charter, Spain commits itself to the entirety of the three paragraphs which provide, among other things, for the fostering of cultural initiatives and their diffusion in regional or minority languages; to help people to have access to cultural production in regional or minority languages by means of translation, dubbing and subtitling; to promote and finance translation and terminological research services; and to include measures of diffusion and support to these minority cultures in other areas of the state's territory and in foreign cultural policy. Equally, as regards economic and social life, regulated in Article 13 of the European Charter, the entirety of possible obligations assuming the highest degree of protection provided for in the text was also accepted.

As regards cross border exchanges, a subject where the states have a tendency to appear more restrictive because they consider that it affects the central nucleus of their sovereign competencies and their territorial integrity, the Spanish Declaration accepted the two obligations provided for in Article 14, consisting in trying to conclude bilateral and multilateral agreements with states having territories where the same language as in the territories of the state is spoken, in order to foster contacts between citizens who use the same language; and to favour cooperation between substate communities of different states with a common language.

The Spanish Declaration attached to the ratification device does not include anything in relation with the control measures of the fulfilment of the obligations assumed by reason of the European Charter. This is due to the fact that the control mechanism established in Part IV of the Charter and which implies the presentation of periodical reports is not optional, and even the possibility of reserving the application of this control mechanism is excluded from it.

5. Conclusions: The possibilities for application of the European Charter in Spain

From what we have explained in this work we may conclude that the ratification of the European Charter for Minority Languages by Spain has basically been made to the highest degree as regards the assumption of obligations, with some remarkable exceptions in the field of university education and in that of the financing of the expenses that the use of regional or minority languages causes in the media. But we have to remember that, as most parliamentary groups that participated in the debate on the ratification of the European Charter expressed, it has never been understood as a means of enlarging the contents of linguistic rights established by the block of constitutionality and the different autonomic laws on linguistic normalisation. In fact, in other European states, the text of the Charter has been received much more coldly than in ours, from the usual French reticence to every conception that may alter the Jacobin-centralist conception of the state, to the curious German Declaration which

excludes languages such as Saxon, Sorbian or Frankish and exclusively focuses on linguistic varieties which belong to very small minorities.[45] It is in our state where the important political implications of linguistic debate have determined the inclusion of every official language protected and supported by the Statutes of Autonomy, attaining in almost every matter the highest degree of protection.

It is true that we cannot expect an enlargement of the contents of linguistic rights by means of the European Charter for three main reasons: firstly, the nature of secondary right which International Law has in matters regarding the protection of rights, which appears as a law of minimums oriented towards the establishment of a minimum standard of protection, which, as an internationally assumed obligation, cannot be unilaterally reduced by means of modifications in state's arrangements; secondly, given the laxity of its writing, because the obligations contained in the Charter are expressed in such a way that its imperative nature is reduced and leaves a wide margin for state optional decision; and thirdly, and fundamentally, because the contents of the European Charter are clearly surpassed by the specific linguistic legislations that each Autonomous Community has endowed itself with.

The fact of not choosing the high range as regards university education and to simply have assumed the obligation of *"fostering and/or authorising"* university education in regional or minority languages, having recourse to the role of the state in relation with university centres presided by the principle of university autonomy, finds its explanation, among other things, in constitutional jurisprudence; the latter considered that university autonomy was being infringed in the judicial resolutions which *"the compulsory use of the legal and official denomination of the Valencian language and idiom in the sphere of the University of Valencia"*

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[45] *"Les langues minoritaires au sens de la Charte européenne des langues régionales ou minoritaires en République fédérale d'Allemagne sont le danois, le haut sorabe, le bas sorabe, le frison septentrional et le frison saterois, ainsi que la langue rom des Sintis et Roms de nationalité allemande; la langue régionale au sens de la Charte en République fédérale d'Allemagne est le bas allemand."* (*"Minority languages within the meaning of the European Charter for Regional or Minority Languages in the Federal Republic of Germany shall be Danish, Upper Sorbian, Lower Sorbian, North Frisian and Sater Frisian, and the Romany language of the German Sinti and Roma; a regional language within the meaning of the Charter in the Federal Republic shall be the Low German language."*) Vid, *Liste des déclarations du traité nº 148*, en Http://conventions.coe.int.

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established.[46] Nevertheless, we believe that the co-official nature of the languages, since being part of the constitutionality block, is not left to the optional decision of each university centre due to the principle of university autonomy, and the ratification of Article 8.1.*e), i)* where the state obliges itself to *"foresee a university education and other forms of higher education in the regional or minority languages"* would have been perfectly coherent with respect to this principle; it is more easy to understand that, due to the respect for university autonomy, Section *ii)* of this Article is not ratified, a section in which the state obliges itself to *"foresee the study of these languages as matters belonging to university and higher education"*. Even if none of it would have had any influence, for instance, on the partial annulment of the regulations of linguistic usage at the University Pompeu Fabra and the University Rovira i Virgili, that were based on the impossibility of the exclusion of Castilian (Spanish), in similar terms to those employed by the Constitutional Court when declaring unconstitutional the article of the Law on the Linguistic Normalisation of Euskera which relies on the sociolinguistic determination of the municipality.[47]

We have to value positively the acceptation of the maximum possible obligations in the field of justice and, especially, in the use of regional or minority languages in the civil and administrative proceedings and penal proceedings, which opens up the possibility of a more resolute action to foster the languages in the administration of justice; the latter is constitutionally protected by the idea that state regulation of the use of languages in the administration of justice is done *"without prejudice to the fact that the Autonomous Communities may regulate the scope implied by the co-official nature concept, as it is established in Article 3.2 of the Spanish Constitution and in the corresponding articles of the Statutes of Autonomy"*, as constitutional jurisprudence indicates.[48]

But as to the basic question referring to what is normally called "preference merit" consisting in the preference of the civil servant who knows the

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[46] STC 75/1997, April 21.

[47] STC 82/1986.

[48] Vid STC 82/86 and STC 56/90.

official languages of the territory, the European Charter does not establish when it refers to the administration of justice, being provided for in Article 10 referring to all the administrative authorities and to public services. Once more, the laxity and the wide margin for optional decision of the text does not allow for the demand of the preference merit principle; however, the door is open to its consideration by establishing *"the acceptation, as far as possible, of the petitions of civil servants who know the regional or minority language to be appointed to the territory where this language is spoken"*. We may say that the European Charter opens the door to the preference merit principle, so that this possibility cannot be rejected, but does not establish it with a degree of demand and imperative so as to make it become a compulsory option.

Another matter still not definitively solved in our linguistic law is that which concerns the labelling of commercial products, a question on which the European Charter keeps a scrupulous silence. Once more, we have to say that this Charter, in this case, Article 13 which deals with economic and social life, legitimates the policies to foster and promote the language in private economic and social relations; but no imperative follows from it that would allow us to improve the present linguistic framework and therefore overcome the present limitations, for instance, in the labelling in regional or minority languages.

However, we have to say that, generally speaking, the obligation, contained in Article 7.2, of erasing every distinction, exclusion, restriction or unjustified preference which would imply a danger for the maintenance or the development of the language, opens up possibilities for a more positive interpretation for regional or minority languages. Nevertheless, the compulsory theological obligation of these discriminations, which must imply a neffective danger, leaves again in the hands of the states a wide margin for optional decision, which does not allow us from the outset to draw too optimistic a conclusion.

Finally, the Charter appears as a norm of minimums, with no capacity for enlarging the contents of the linguistic law in force in our state. Its most important contribution is found precisely in the fact of appearing as a minimum norm, for it offers an international guarantee of a minimum protection treatment for the

languages involved. We could say that it excludes the possibility of going backwards in linguistic matters, although by itself it does not imply progress in the contents regarding protection.

There are however two matters for which it is necessary to study in detail the possibilities that the European Charter provides to enlarge the present regulatory framework: on the one hand, in relation with Article 7.1.*b)* which makes it obligatory to respect the geographical linguistic area avoiding administrative divisions which are a hindrance to the fostering of the regional or minority language; and, on the other, in relation to Article 14 (b) which legitimates the existence of a cross-border linguistic cooperation at the level of local and regional authorities.

In fact, in view of Article 7.1.b) we may find enough arguments to progress towards the idea of a sole linguistic authority for languages which are the object of regulation in more than one Autonomous Community, or at least to perhaps be able to speak of the necessary interautonomous cooperation in the protection and promotion of these languages. Thus, in the case of the Catalan language, subject to different autonomous regulations within Spain, as long as this administrative division is a hindrance for the language, the Charter would oblige the removal or overcoming of this hindrance, always taking into account the constitutional limit of the prohibition of federation agreements between the different autonomous bodies.

Also as regards the agreements between substate bodies of different states in linguistic matters, we understand that the Charter makes an important contribution to the Spanish legislation by excluding this agreement of linguistic cooperation from the prohibition of concluding international agreements by Autonomous Communities on the basis of a rigorous constitutional interpretation of the state reservation of international relations. Spain, by means of ratifying the European Charter, expressly accepts this possibility, and from this moment on, the interpretation of the central state's exclusivity in matters regarding international relations will have to be made more flexible with the possibility of international agreements in linguistic matters between substate bodies.

At any rate, the most important contribution of the European Charter to the framework of the juridical regulation of the languages of Spain is found in the control mechanism it establishes by means of the state obligation of presenting periodical reports on the application of the Charter. These state reports will be analysed by an Committee of Experts, made up of one member of each party state, appointed by the Ministerial Committee from among a list of people *"with maximum integrity and with recognised competency in the matters dealt with in the Charter"*. Practice demonstrates to us that this model of composition of a Committee usually ends up changing: from a Committee of Experts to a delegates' committee of the state governments, while the Ministerial Committee, of an unequivocal intergovernmental nature, tends to follow the prioritisation and the recommendations of each state member in the appointment of the experts.

But the generally contradictory nature of the analysis of state reports opens up a way of hope; for instance, Article 16.1 of the Charter states that the organisations and associations legally established in a party state will be able to draw the attention of the Committee of Experts to matters regarding the fulfilment of the Charter. The text is not too clear, but it does not seem to indicate that the party states are the ones which can entitle some associations or bodies; it seems to indicate that any legally constituted association or organisation may draw the attention of the Committee. This opens the door to the possibility that different public bodies -local and autonomous administrations, universities..- and civic associations or study and research centres may urge or draw the attention of the Committee to matters which arise by the application of the European Charter. This can be done by counterbalancing pieces of state information or by providing new data. These pieces of information, once consulted with the party state, may be taken into consideration by the Committee of Experts when writing its report and presenting it before the Ministerial Committee. In addition to this, the Committee of Experts will be able to send recommendations to the state members once their reports and the pieces of information received have been analysed.

Although in the mechanism we have just seen the possibilities for non-governmental opinions to have some effect are not guaranteed, there is

another way which seems initially more effective: these bodies or associations will be able to present declarations regarding the policy followed by a party state, in accordance with Part II of the Charter. And these declarations figure integrally, without being discussed or counterbalanced with the party state, for which a quite interesting way of complaint before the international public opinion opens up, which may have some effect on the Ministerial Committee, as well as every two years on the report presented before the Parliamentary Assembly.

We have to value very positively the fact that the right of drawing the attention of the Expert's Committee and of presenting declarations is not limited to some associations or bodies -such as associations with a status recognised before the Council of Europe-; because, although there is a danger that groups driven by political motivations try to offer a biased view of the sociolinguistic reality of a specific territory, it is a positive fact as long as reports -we could say, state counter-reports- which provide a real view of the situation can be presented by university institutions or associations devoted to research and study with enough prestige. In this sense, it would be quite convenient that, from university sectors and study and research institutions, a kind of non-governmental observatory were to be organised to scientifically follow-up the application of the Charter. We have to take into consideration that the dispersion until now of international institutions before which it is possible to present regional or minority linguistic claims -for instance, the Committee had received complaints in favour of the elimination of any form of racial discrimination- is finished in Europe due to the existence of a specialised authority which is exclusively devoted to languages.

At the moment of concluding this note, state reports have been presented by the The Netherlands, Croatia, Finland, Hungary, Liechtenstein, Norway, Sweden and Switzerland, and the Committee of Experts has given recommendations for the first ones. In addition to this, the Committee has gone to Sweden to talk with the authorities at different government levels and with civil society on matters regarding the application of the Charter in order to elaborate a report with recommendations. The Committee of Experts with its working Bureau and according to its Internal Rules, seems to have taken an interesting work dynamic, with *in loco* (on-the-spot) visits, and

it will need the support of the party states, but also of the scientific communities and civil society.

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* Disponible en català, "La diversitat lingüística europea. Per a qui? Els casos de Finlàndia i Suècia", a El dret a la diversitat lingüística (2002), Col·lecció CIEMEN-Drets lingüístics, Ed. Mediterrània, Barcelona

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